

March 26, 2004

The Honorable Kathleen A. Sheehy
Administrative Law Judge
Office of Administrative Hearings
100 Washington Square, Suite 1700
Minneapolis, Minnesota 55401-2138

Re: Application by Great River Energy for Route Permit for High Voltage
Transmission Line
OAH Docket No. 3-2901-15763-2
EQB Docket No. 03-65-TR- GRE PMG

Dear Judge Sheehy:

The Environmental Quality Board staff wanted to submit these comments in writing to assist you in preparing your final report and recommendation for the EQB Board. There are several matters to bring to your attention that may help you review the administrative record in this case.

1. Applicable Rules.

The rules of the EQB that apply to this proceeding are found in Minn. Rules chapter 4400. The particular sections are parts 4400.2000 to 4400.2950, because this project qualifies for alternative review under the Power Plant Siting Act. Minn. Stat. § 116C.575.

2. Procedural Requirements.

The statutes and rules establish a number of procedural requirements the EQB and the applicant must follow in processing the permit application. The Exhibits that the EQB staff introduced into the record demonstrate that all procedural steps were followed. No person has raised any question about the process that was followed in this case. Indeed, the public was given ample opportunity to learn about this project and to be heard. Not only did the EQB follow all the procedural steps of the rules, but GRE also held numerous public forums to solicit public input. Mr. Kevin Lennon included a slide in his power point presentation listing the various public forums that were held by the company.

The EQB did not have one exhibit available at the March 18 hearing. That is Exhibit 22 – the notice of hearing published in the Maple Grove newspaper. The EQB has now obtained an affidavit of publication from the newspaper and that document is enclosed.

3. Route Selection.

The EQB's task here is to approve a route between the Elm Creek Substation and the Parkers Lake Substation connecting the five substations in between. Once the Public Utilities Commission determines that a new transmission line of a certain voltage between two end points is needed, the EQB's role is to find the best route for that line. Minn. Stat. § 116C.53, subd. 3

Therefore, the focus here is on what is the best route between the two end points. There are a number of issues related to selection of a route that should be taken into account.

a. Specific Route. Regardless of which route you recommend, you should describe the route with specificity. There is information in the record, particularly in the application and in the environmental assessment, that provides the details of each route segment that is under consideration. You can rely on this information to adequately describe the route.

b. Right-of-way. As part of describing the route that you recommend, it would also be appropriate to indicate how wide the right-of-way is that is approved. By statute, a route can be approved that has a variable width of up to 1.25 miles. Minn. Stat. § 116C.52, subd. 8. However, in the Plymouth – Maple Grove area, a width of 1.25 miles would encompass too wide an area. It would suffice to simply say that GRE shall stay within the existing right-of-way for those portions of the line that are a rebuild or an upgrade of the existing 69 kV line, or to say that the right-of-way is 40 feet either side of the center line for those portions of the route that are new.

c. Nonproliferation of Routes. The Minnesota Supreme Court has held that the EQB should attempt to avoid the proliferation of transmission line routes. *People for Environmental Enlightenment and Responsibility (PEER), Inc. v. Minnesota Environmental Quality Council*, 266 N.W.2d 858, 873 (Minn. 1978). There the Court said:

We therefore conclude that in order to make the route-selection process comport with Minnesota's commitment to the principle of nonproliferation, the MEQC [now the EQB] must, as a matter of law, choose a pre-existing route unless there are extremely strong reasons not to do so. We reach this conclusion partly because the utilization of a pre-existing route minimizes the impact of the new intrusion by limiting its effects to those who are already accustomed to living with an existing route. More importantly, however, the establishment of a new route today means that in the future, when the principle of nonproliferation is properly

applied, residents living along this newly established route may have to suffer the burden of additional power line easements.

Id. at 868.

We do not read this language to mean that no new transmission line routes can be established, because obviously new routes will be established, but it does mean that there should be strong reasons to choose a new route over an existing route.

d. Costs. The cost of a new transmission line is important to the applicant and to Minnesota ratepayers as well. It is certainly a factor that must be considered by you and by the EQB. It is included in the EQB rules listing factors to be considered in selecting new transmission routes. Minn. Rules part 4400.3150.L. The difficult task is determining what weight to give to costs. Obviously, everything can be mitigated if enough money is spent addressing a concern.

The Supreme Court held in the *PEER* case, and in the earlier *No Power Line Inc. v. Minnesota Environmental Quality Council*, 262 N.W.2d 312 (Minn. 1977) case, that both the Environmental Rights Act and the Environmental Policy Act apply to the EQB when making a decision on where to route a proposed high voltage transmission line. The Environmental Policy Act provides that economic factors alone will not justify pollution, impairment or destruction of the environment. Minn. Stat. § 116D.04, subd. 6. That same law also provides that an alternative must be both feasible and prudent.

Incidentally, at the time the Supreme Court decided *PEER* and *No Power Line*, a high voltage transmission line was one over 200 kilovolts. The definition was changed in 2001 to be any line over 100 kilovolts. Minn. Stat. §116C.52, subd. 4. The holdings of both cases would seem to apply to any transmission line the Legislature defined as a high voltage transmission line.

e. Factors to Consider. Minn. Rules part 4400.3150 lays out the factors to consider in deciding which route to approve. All of those have been taken into account by the applicant and considered in the environmental assessment.

f.. Prohibited Routes. Minn. Rules part 4400.3350 identifies some areas that are off limits for transmission lines. None of those areas is involved here.

4. Permit Conditions.

An important part of any permit issued by the EQB is the permit conditions. The staff envisions that there will be permit conditions included in this permit, and GRE is aware that there will be conditions. Most of these conditions will be a common sense recognition of the commitments GRE has made in its application regarding construction of the transmission line. For example, if GRE has identified a certain type of structure that it will use, the permit will likely spell out a recommendation to install that type of

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structure. If GRE agrees to install the wires on the west side of the structure, the permit should provide for that.

GRE, of course, will always have the ability to seek an amendment of the permit if circumstances develop after the permit is issued that necessitate a change, but it is reasonable to expect an applicant to construct what it says it will construct. If there were any special conditions that you believe are appropriate, we would request that you specifically set those out in your report. The staff will be able to specify what other conditions, if any, are appropriate when the matter comes before the Board for final action.

In conclusion, we hope that this discussion is helpful to you in reviewing the record and preparing your report and recommendation. We will serve a copy of this letter upon GRE and upon those persons who are on the EQB Project Contact List. We will also post it on the EQB webpage. Thank you.

Sincerely,

Alan Mitchell

cc: Kevin Lennon, GRE
Carole Schmidt GRE
EQB Plymouth-Maple Grove 115 kV Project Contact List